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BY ECFS

December 20, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **In the Matter of the Application by Qwest Communications International, Inc.
For Authorization Under Section 271 of the Communications Act to Provide
In-Region, InterLATA Service in the States of Colorado, Idaho, Iowa, Montana,
Nebraska, North Dakota, Utah, Washington, and Wyoming,**
WC Docket No. 02-314

Ex Parte Presentation

Dear Ms. Dortch:

The following is a response to the *ex parte* letter submitted to the Commission by Qwest Communications on December 19, 2002 (signed by Rick Hays). Qwest's letter is a response to the information filed with the Commission by Ronan Telephone Company on December 18, 2002, regarding in-region interLATA traffic.

Ronan Telephone Company (RTC) has provided information regarding alleged in-Region traffic handled by Qwest in violation of Section 271 of the Telecommunications Act. RTC has consistently maintained that because of the data limitations, and alternative legal interpretations, it cannot prove with absolute certainty that Section 271 violations have occurred, *but*, RTC adamantly maintains that the information it has provided is strongly indicative of potential violations, which deserve the Commission's full and complete analysis and investigation *before* a decision is made on the pending application.

Ronan Telephone is a small family owned business (ILEC) which has provided local telephone service to the residents of the Mission Valley of Montana for over 40 years. As a very small independent company, RTC cannot hope to compete with the financial and political clout of Qwest at the national level. But, we hope the information we provide is helpful to the

Commission. If it is shown that in fact illegal activities have occurred, we do not believe that Qwest should be rewarded for its conduct by approving the 271 application.

During our informal discussions with Qwest, Qwest described potential explanations for the traffic, which might or might not apply to the traffic identified by RTC, and might or might not provide a legal justification. RTC acknowledges that further details are needed to prove its allegations, but also notes that Qwest is probably the only entity in possession of such information.

RTC is also filing with the Commission, a sworn Declaration by Roger Romero, the RTC Data Processing Manager, detailing the information RTC has discovered, along with a computer file containing detailed records of in-Region interLATA calls. Over a six month period, RTC has identified over 49,000 in-Region calls being terminated to the Ronan, Pablo and Hot Springs exchanges (with a total of approximately 5000 access lines), over the Qwest trunk; and over 17,000 of such calls over a three month period on the 0432 CIC Carrier Code reserved by Qwest. Since other traffic of this nature either terminates to other Qwest exchanges (since Qwest serves all the large population centers in its region), or is terminated over Feature Group C trunks which do not provide detailed calling number information (which is true of other ILECs in Montana, and possibly other ILECs in the region), the problem identified by RTC may in fact only be a small indicator of a much wider practice.

A number of statements in Qwest's letter contain mischaracterizations which require a response. First, RTC did not provide complete details regarding the calling information to Qwest, because RTC does not want to inadvertently violate the CPNI laws and rules which protect consumer privacy (47 U.S.C. §222 and 47 C.F.R. §64.2001 et.seq.). RTC therefore stripped off the last 4 digits of the telephone numbers and other information that might be used to specifically identify customers. Second, all of the calling information for calls over Qwest's trunk group are undoubtedly already in Qwest's possession; so there certainly should be no need to provide Qwest information which it already possesses. For example, the "COMET" data which RTC used to verify its findings is information received directly from Qwest.

Third, RTC did not refuse to provide further information, "because Qwest rejected" RTC's settlement proposal. During the conversation referred to by Qwest, RTC's Attorney made it clear that RTC would consider providing more detailed information after legal research on the CPNI issue by the parties' legal counsel, and the possibility of an agreement that could insure the confidentiality of the information without violating the law. It was stated that RTC was willing to work on Qwest's request for further information independently of all other issues we discussed (and thus, independently of the pending litigation). But even without the information RTC did not provide to Qwest, it is clear from the NPA and NXX originating the terminating numbers, that a significant amount of the traffic over Qwest's trunk terminating to Ronan, is interLATA traffic within Qwest's 14 state region. Furthermore, most of this traffic is carried on the "0432 CIC" Carrier Code, which Qwest's July 16, 2002 letter indicates will be ordered and used for "interLATA retail toll" by Qwest's 272 subsidiary *following* 271 approval.¹

¹ See July 16, 2002 letter attached to RTC's December 18, 2002 *ex parte* filing.

Qwest further describes the negotiations between the parties regarding the pending litigation involving unpaid terminating access charges.² The primary issue in the litigation is Qwest's failure to pay terminating access charges for traffic which originates with wireless carriers (within the Major Trading Area) and carried as a transit carrier by Qwest and terminated to the Plaintiffs over Qwest trunk groups. The Ninth Circuit agreed with the Plaintiffs position in this case and reversed (and remanded) the District Court's previous ruling. However, Qwest has not paid RTC or Hot Springs for *any* of the traffic terminating on Qwest's trunk group (ie. all wireline and wireless traffic) for four years (and has paid only a portion of the traffic terminated by the other Plaintiffs). Furthermore, in August of this year, the traffic terminated by Qwest over its trunk group to RTC and Hot Springs Telephone *more than doubled*, and much of this traffic is interstate and in-Region wireline traffic (including over the 0432 CIC). It is therefore obvious to RTC that Qwest used the pendency of the litigation involving wireless-MTA traffic as a guise to avoid paying for a large amount of intrastate and interstate wireline traffic, and is funneling large amounts of traffic over this connection free of charge, in violation of federal and state tariff requirements.

Therefore, contrary to Qwest's statement, the information provided to the Commission herein is intricately related to the pending litigation between the parties, since it involves non-payment for traffic traversed over the same trunk facilities; and RTC intends to present this information to the U.S. District Judge in its case against Qwest. That is, in addition to the Section 271 issues, Qwest is failing to pay the full and correct tariffed interstate and intrastate rates for this traffic. Finally, we find it highly ironic that Qwest would suggest that linking two unrelated matters (which are in fact related), might be inappropriate, in light of Qwest's long, well documented history in Montana and other states, of linking unrelated matters in settlement agreements, and even obtaining agreements of parties not to appear before the Montana State Legislature (and the recent revelations regarding "secret agreements" with McLeod and Covad, not to oppose the Qwest-US West merger application).

In summary, we believe the issues raised by Ronan Telephone and other parties in this proceeding, need to be thoroughly investigated by the Commission before 271 approval is granted. In light of the statutory deadline, we therefore recommend that the current application be rejected and a new Docket considered after these issues are thoroughly investigated and

² *3 Rivers Telephone Cooperative v. Qwest*, Case No. 01-05065, Memorandum Opinion, U.S. 9th Circuit Court of Appeals (August 27, 2002). This case was remanded to the U.S. District Court in Montana, where it remains pending. Ronan Telephone Company, Hot Springs Telephone Company, and Lincoln Telephone Company (three of the nine Plaintiffs in that case) participated in the settlement discussions referenced by Qwest.

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addressed. We are available at any time to provide more detailed information to the Commission.

We may be reached at 406-442-7115 (Ivan C. Evilsizer) and 406-676-9212 (Jay Wilson Preston).

Sincerely,

/s/

Ivan C. Evilsizer
Attorney for Ronan Telephone Company, Hot Springs Telephone Company, and Lincoln Telephone Company

cc: Chairman Powell (by fax)
Commissioner Abernathy (by fax)
Commissioner Copps (by fax)
Commissioner Martin (by fax)
C. Libertelli (by email)
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